



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
KEITH W. COOLEY, DIRECTOR

LINDA A. WATTERS  
COMMISSIONER

## **BILL ANALYSIS**

**BILL NUMBER:** SB 290 (as introduced)  
**TOPIC:** Secondary Mortgage Loan Act Amendments regarding Professional Employee Organizations  
**SPONSOR:** Richardville  
**CO-SPONSORS:** Hardiman, Hunter, Cherry, Gleason, Stamas, Allen, Thomas, Olshove, Kuipers, McManus, Cassis, Van Woerkom, Garcia and Barcia  
**COMMITTEE:** Senate Banking and Financial Institutions  
**Analysis Done:** March 5, 2007

### **POSITION**

The Office of Financial and Insurance Services supports this legislation.

### **PROBLEM/BACKGROUND**

The Mortgage Brokers, Lenders and Servicers Licensing Act (MBLSLA) and the Secondary Mortgage Loan Act (SMLA) require individual loan officers to be licensed unless they are working as an employee of another licensed or registered entity. Neither the MBLSLA nor the SMLA defines employee. Because of this gap in the laws, the Commissioner issued a bulletin in November 2003 providing guidance on employees. OFIS maintains that an employee is one paid and issued a W-2 by the licensed or registered mortgage company and is under the general control and supervision of the licensed or registered mortgage company.

The bulletin also provides that a loan officer that is leased by the mortgage company and paid by the leasing company is not an employee of the mortgage company. After reviewing employee leasing agreements, OFIS has found that hiring, firing, and general supervision of the individual was at the discretion of the leasing company. OFIS' chief concern about leased employees was that the mortgage company would argue that they were not responsible for the actions of the leased loan officers. A second concern was whether consumers would be protected under the mortgage company's bond if a leased loan officer violated the law.

Last session, the Governor signed Public Act 113 of 2005. This legislation clarified how public employee organizations (PEO) were to be treated if hired under a license issued under the Mortgage Brokers, Lenders and Servicers Licensing Act (MBLSLA), but not for PEOs hired under a license issued under the Secondary Mortgage Loan Act (SMLA).

## **DESCRIPTION OF BILL**

The bill amends Section 2 of the SMLA 493.52, that would grant an exemption from licensure or registration for a person who is an employee of a professional employer organization (PEO) as that term is defined in section 4 of the Single Business Tax Act, MCL 208.4 and is solely performing services as an employee of only 1 mortgage broker, lender or servicer. Under the bill, the mortgage broker or mortgage lender is required to direct and control the activities of the individual performing services under this subdivision and shall be responsible for all activities of that individual. Additionally, the mortgage broker or mortgage lender is required to assume responsibility for actions of the individual that are covered by the proof of a financial responsibility deposit required in the SMLA.

MCL 208.4 defines a PEO as an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement establishing an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following: maintaining the right of direction and control of employees' work, although this responsibility may be shared with the other entity; paying wages and employment taxes of the employees out of its own accounts; reporting, collecting, and depositing state and federal employment taxes for the employees; and retaining the right to hire and fire employees.

## **SUMMARY OF ARGUMENTS**

### **Pro**

This legislation makes the SMLA consistent with the MBLSLA clarifying the responsibilities of licensees that hire PEOs.

### **Con**

The bill does not specifically require a licensed or registered mortgage broker or lender to keep a copy of any contract between the PEO and the mortgage company or to maintain detailed lists of all individuals who are employees of a PEO. However, OFIS is able to require a licensee or registrant to keep certain records and provide certain

documents during routine examinations or specific investigations, and is comfortable with the powers otherwise granted in the SMLA.

### **FISCAL/ECONOMIC IMPACT**

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services:

Budgetary:

Revenue:

Comments:

(b) To the Department of Labor and Economic Growth:

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan:

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State:

Comments:

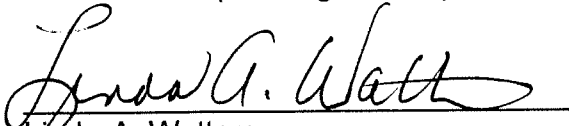
### **OTHER STATE DEPARTMENTS**

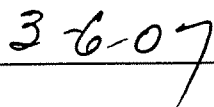
Michigan Department of Treasury.

### **ANY OTHER PERTINENT INFORMATION**

**ADMINISTRATIVE RULES IMPACT**

Rules can be promulgated to provide for administration of the act.

  
\_\_\_\_\_  
Linda A. Watters  
Commissioner

  
\_\_\_\_\_  
Date